85-1125

No. _____

Supreme Court, U.S.
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In The

Supreme Court Of The United States of America

OCTOBER 1985 TERM

VICTOR W. PRYOR,
Petitioner,
vs.
DOLORES PRYOR,
Respondent.

BRIEF FOR RESPONDENT

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January, 1986

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STATEMENT OF THE CASE

The petitioner, VICTOR PRYOR, in presenting his statement of the case, has made a representation to this Court that the Oklahoma Court of Appeals, Division 4, reversed the trial court's sustaining of Mr. Pryor's demurrer. This representation is false. The Court of Appeals did not reverse any judgment of the trial court but instead merely further modified the original divorce decree and judgment of the trial court in order to correct the 'considerable inequity' of the original alimony provision.

SUMMARY OF ARGUMENT

Petitioner has argued in his Petition for Writ of Certiorari that he has been deprived due process of law under the Fourteenth Amendment to the United States Constitution in four areas, none of which has merit.

The Oklahoma Court of Appeals, Division 4, rendered an opinion which is neither a novel nor erroneous interpretation of the equitable law in Oklahoma. The Oklahoma Court of Appeals, Division 4, did not selectively apply the Oklahoma statutes of limitation.

The Oklahoma Court of Appeals, Division 4, properly held that special consideration and careful scrutiny should be made where parties to a divorce proceeding are not each represented by counsel and where one of the parties (petitioner) is a licensed practicing attorney.

Finally, the decision of the trial court granting petitioner's demurrer was not reversed but instead, the Court of Appeals determined that the original decree and trial court's decision must be further modified to effect a fair and equitable result.

ARGUMENT

RESPONSE TO ARGUMENT I

The Petition for Writ of Certiorari filed herein contains the text of the statutes governing the establishment and authority of the Court of Appeals of the State of Oklahoma. The citizens of Oklahoma via the Oklahoma legislature have established this appellate court system which has the power to dispose of any cases assigned to it by the Supreme Court of Oklahoma. Decisions rendered by the appellate courts are not appealable but may be reviewed by the Supreme Court if Certiorari is granted. The statutes provide that opinions of the Court of Appeals which apply settled precedent and do not settle new questions of law shall not be released for publication in the official reporter. 20 Okla. Statutes, 1981, Section 30.5, Laws, 1970 C.247, Section 5.

The case at bar does not create precedent nor does it settle any new question of law. The appellate court, in its opinion, applied sound principles of law as established by the Oklahoma Supreme Court. Particularly appropriate cases cited and used by the Court of Appeals in its opinion include *Chapman v. Chapman*, 692 P.2d 1369 (Okla. 1984) for the proposition that a vacation claim may be instituted more than two (2) years

after judgment by an independent suit in equity where suit is predicated upon extrinsic fraud practiced by the successful part. *Key v. Key,* 388 P.2d 505 (Okla. 1963) and *Bradshaw v. Bradshaw,* 578 P.2d 762 (Okla. App. 1977) holding that a miminal showing of undue influence or unfair advantage would justify a court in equity in setting aside the contract which purported to settle their property rights.

The Court of Appeals did not set new precedent and did not impose a different duty upon Mr. Pryor. The Oklahoma Supreme Court's denial of Certiorari in this action did not deprive petitioner of due process of law and was in fact the proper and appropriate action to take.

RESPONSE TO ARGUMENT II

Established statutes and caselaw in Oklahoma prudently provide for the limitation of actions in various legal proceedings to balance and protect the interests of the parties therein. Respondent originally institued this equitable action to vacate parties' divorce decree upon certain grounds including material misrepresentation and that because the decree did not set alimony in a sum certain, the decree was void. *Steincamp v. Steincamp,* 593 P.2d 495 (Okla. 1979). The trial court vacated the alimony portion of the decree and modified same. Respondent appealed the trial court's decision and this appeal resulted in the Court of Appeals' further modification to effect a just and equitable settlement of the parties' rights.

Petitioner claims that the enforceability of the statute of limitations was suspended by the courts in correcting the gross injustices contained in the original

decree. However, the appellate court provided sound reasoning for its action in applying the Oklahoma Supreme Court's principles enunciated in *Chapman v. Chapman,* 692 P.2d 1369 (Okla. 1984). Further, the original decree required modification since portions therein were void for indefiniteness and the statute of limitation does not and cannot apply to a void judgment. 12 Okla. Statute 1981, Section 1038.

RESPONSE TO ARGUMENT III

The facts attendant to this divorce case clearly mandated close scrutiny by the Oklahoma Courts. The original divorce decree was entered into after a 26 year marriage. Petitioner, who had been a practicing attorney for approximately 14 years, prepared the petition and decree after discouraging respondent from hiring outside counsel and informing her that she was entitled to one-half (1/2) of the estate. Petitioner's net worth at the time of divorce was $1,431,000.00, yet respondent received property valued at approximately $200,000.00, or less that 15% of the value of the marital estate. There was overwhelming evidence which revealed that petitioner unduly influenced his wife, thus gaining an unfair advantage over her.

As a practicing attorney in Oklahoma, petitioner should be aware of the ethical and moral obligations imposed upon him in a lawsuit where his own business and financial interests are at issue. This is especially important when the opposing party (his wife) retained no independent legal counsel at his own urging.

Petitioner's complaint that his due process rights

under the Fourteenth Amendment were violated is wholly without merit. His grossly improper conduct in preparing an inequitable and void judgment mandated this court's close scrutiny and subsequent modification.

RESPONSE TO ARGUMENT IV

Petitioner testified at great length in the trial of this proceeding. Indeed, it is in great part his own testimony that persuaded the appellate court to modify the judgment on appeal as the court's opinion indicates. The value of the marital estate was not in dispute in that petitioner's own valuation was used. Nor did petitioner deny that respondent was entitled to one-half (1/2) of the estate, which amount was ultimately awarded to her.

The question of law as to whether or not the decree was properly vacated is addressed in full in the appellate court's opinion.

The Court of Appeals did not reverse petitioner's demurrer, but, instead, further modified the decree in order to conform to the great weight of the evidence. To do otherwise would have resulted in great injustice.

CONCLUSION

In conclusion, respondent respectfully prays that the Supreme Court of the United States of America decline jurisdiction for Mr. Pryor's petition for Writ of Certiorari.

Respectfully submitted,

JAMES W. BILL BERRY & ASSOCIATES

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ATTORNEYS FOR RESPONDENT

CERTIFICATE OF MAILING

This is to certify that a true and correct copy of the above and foregoing instrument was mailed to Tom Cummings, Attorney for Petitioner, 1515 Classen Boulevard, Suite 100 East, Oklahoma City, Oklahoma 73106, on the_____ day of January, 1986.

JAMES W. BILL BERRY